

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Amend the amendment by inserting after the title the following:

Amend the bill by striking out the title and substituting the following:

**'An Act To Prohibit the Delivery of Tobacco Products to Minors'**

Amend the bill by inserting before section 1 the following:

**'Sec. 1. 22 MRSA §1551, sub-§5** is enacted to read:

**5. Premium cigar.** "Premium cigar" means a cigar that weighs more than 3 pounds per 1,000 and is wrapped in whole tobacco leaf.'

Amend the bill by striking out all of section 2 and inserting the following:

**'Sec. 2. 22 MRSA §1555-C**, as enacted by PL 2003, c. 444, §2, is amended to read:

**§ 1555-C.Delivery sales of premium cigars**

The following requirements apply to delivery sales of ~~tobacco products~~premium cigars within the State beginning October 1, 2009.

**1. License required.** It is unlawful for any person to accept an order for a delivery sale of ~~tobacco products~~premium cigars to a consumer in the State unless that person is licensed under this chapter as a tobacco retailer. The following penalties apply to violations of this subsection.

A. A person who violates this subsection commits a civil violation for which a fine of not less than \$50 and not more than \$1,500 may be adjudged for each violation.

B. A person who violates this subsection after having been previously adjudicated as violating this subsection or subsection 2, 3 or 4 commits a civil violation for which a fine of not less than \$1,000 and not more than \$5,000 may be adjudged.

**2. Requirements for accepting order for delivery sale.** The following provisions apply to acceptance of an order for a delivery sale of ~~tobacco products~~premium cigars.

A. When accepting the first order for a delivery sale from a consumer, the tobacco retailer shall obtain the following information from the person placing the order:

(1) A copy of a valid government-issued document that provides the person's name, current address, photograph and date of birth; and

(2) An original written statement signed by the person documenting that the person:

- (a) Is of legal age to purchase tobacco products in the State;
- (b) ~~Has made a choice whether to receive mailings from a tobacco retailer;~~
- (c) Understands that providing false information may constitute a violation of law; and
- (d) Understands that it is a violation of law to purchase ~~tobacco products~~premium cigars for subsequent resale or for delivery to persons who are under the legal age to purchase ~~tobacco products~~premium cigars.

B. If an order is made as a result of advertisement over the Internet, the tobacco retailer shall request the e-mail address of the purchaser and shall receive payment by credit card or check prior to shipping.

C. Prior to shipping the ~~tobacco products~~premium cigars, the tobacco retailer shall verify the information provided under paragraph A against a commercially available database derived solely from government records consisting of age and identity information, including date of birth.

D. A person who violates this subsection commits a civil violation for which a fine of not less than \$50 and not more than \$1,500 may be adjudged for each violation.

E. A person who violates this subsection after having been previously adjudicated as violating this subsection or subsection 1, 3 or 4 commits a civil violation for which a fine of not less than \$1,000 and not more than \$5,000 may be adjudged.

**3. Requirements for shipping a delivery sale.** ~~The following provisions apply to a tobacco retailer shipping tobacco products pursuant to a delivery sale.~~

~~A. Prior to shipping, the tobacco retailer shall provide to the delivery service the age of the purchaser as provided under subsection 2, paragraph A and verified under subsection 2, paragraph C.~~

~~B. The tobacco retailer shall clearly mark the outside of the package of tobacco products to be shipped to indicate that the contents are tobacco products and to show the name and State of Maine tobacco license number of the tobacco retailer.~~

~~C. The tobacco retailer shall utilize a delivery service that imposes the following requirements:~~

~~(1) The purchaser must be the addressee;~~

~~(2) The addressee must be of legal age to purchase tobacco products and must sign for the package; and~~

~~(3) If the addressee is under 27 years of age, the addressee must show valid government-issued identification that contains a photograph of the addressee and indicates that the addressee is of legal age to purchase tobacco products.~~

~~D. The delivery instructions must clearly indicate the requirements of this subsection and must declare that state law requires compliance with the requirements.~~

~~E. A person who violates this subsection commits a civil violation for which a fine of not less than \$50 and not more than \$1,500 may be adjudged for each violation.~~

~~F. A person who violates this subsection after having been previously adjudicated as violating this subsection or subsection 1, 2 or 4 commits a civil violation for which a fine of not less than \$1,000 and not more than \$5,000 may be adjudged.~~

**4. Reporting requirements.** No later than the 10th day of each calendar month, a tobacco retailer that has made a delivery sale of ~~tobacco products~~premium cigars or shipped or delivered ~~tobacco products~~premium cigars into the State in a delivery sale in the previous calendar month shall file with the Department of Administrative and Financial Services, Bureau of Revenue Services a memorandum or a copy of each invoice that provides for each delivery sale the name and address of the purchaser and the brand or brands and quantity of ~~tobacco products~~premium cigars sold. ~~A tobacco retailer that meets the requirements of 15 United States Code, Section 375 et seq. (1955) satisfies the requirements of this subsection.~~ The following penalties apply to violations of this subsection.

A. A person who violates this subsection commits a civil violation for which a fine of not less than \$50 and not more than \$1,500 may be adjudged for each violation.

B. A person who violates this subsection after having been previously adjudicated as violating this subsection or subsection 1,or 2 ~~or 3~~ commits a civil violation for which a fine of not less than \$1,000 and not more than \$5,000 may be adjudged.

**5. Unlawful ordering.** It is unlawful to submit ordering information for ~~tobacco products~~premium cigars by delivery sale under subsection 2, paragraph A in the name of another person. A person who violates this subsection commits a civil violation for which a fine of not more than \$10,000 may be adjudged.

**6. Rulemaking.** The department and the Department of Administrative and Financial Services shall adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**7. Forfeiture.** Any ~~tobacco product~~premium cigar sold or attempted to be sold in a delivery sale that does not meet the requirements of this section is deemed to be contraband and is subject to forfeiture in the same manner as and in accordance with the provisions of Title 36, section 4372-A.

**8. Enforcement.** The Attorney General may bring an action to enforce this section in District Court or Superior Court and may seek injunctive relief, including a preliminary or final injunction, and fines, penalties and equitable relief and may seek to prevent or restrain actions in violation of this section by any person or any person controlling such person. In addition, a violation of this section is a violation of the Maine Unfair Trade Practices Act.

Amend the amendment by striking out all of subsection 6 (page 1, lines 13 to 15 in amendment) and inserting the following:

**6. Exemption.** The provisions of this section do not apply to the delivery sale of premium cigars to a consumer.

Amend the amendment by inserting before the summary the following:

Amend the bill by inserting after section 4 the following:

**'Sec. 5. Effective date.** This Act takes effect October 1, 2009.'

Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

## SUMMARY

This amendment incorporates Senate Amendment "A" except that the definition of "premium cigar" is amended by taking out the word "hand."

This amendment amends Committee Amendment "A" as follows:

1. It exempts premium cigars from the requirement that delivery sales of tobacco products must be shipped to a licensed tobacco distributor or retailer;
2. It retains current law on shipment of tobacco products, narrowing it beginning October 1, 2009 to apply to premium cigars, and retaining the requirement that shippers of premium cigars into the State be licensed as tobacco retailers;
3. It repeals a provision of the law that has been enjoined by the federal court and a provision that does not apply to premium cigars; and
4. It adds an effective date of October 1, 2009.